Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Applications of Sprint Corporation,	)	CC Docket No. 99-333
Transferor, and MCI WorldCom, Inc.,	)	
Transferee, for Consent to Transfer	)	
Control of Corporations Holding	)	
Commission Licenses and Authorizations	)	
Pursuant to Sections 214 and 310(d) of the	)	
Communications Act and	)	
Parts 1, 21, 24, 25, 63, 73, 78, 90 and 101	)	

COMMENTS OF THE ALLIANCE FOR PUBLIC TECHNOLOGY

The Alliance for Public Technology ("APT")[1], a consumer coalition of 84 public interest organizations and more than 180 individuals, submits these Comments on the Application by Sprint Corporation and MCI WorldCom, Inc. to transfer control of Sprint's Title II and Title III authorizations and licenses to MCI WorldCom.

The Communications Act of 1934, as amended, requires that the Federal Communications Commission ("Commission") determine whether the requested transfer serves "the public interest, convenience and necessity."[2] Absent conditions and adequate safeguards, APT does not believe that the proposed merger is in the public interest. It will result in serious anti-competitive harm in the Internet and long

[1] The Alliance was founded in 1988 as a non-profit, tax-exempt membership organization with the charter to foster affordable access by all consumers to advanced telecommunications services. APT's Board of Directors govern the organization.

[2] 47 U.S.C. Sec. 310 (d). See also, 47 U.S.C. Sec. 214 (a).

distance markets that will delay the deployment of advanced services to underserved communities. Absent adequate safeguards, the merger will not further the important goal of Section 706 of the Telecommunications Act to accelerate deployment of advanced services to all Americans.

In conducting its public interest evaluation, APT strongly urges the Commission to consider whether the proposed transaction will harm, or help, one of the fundamental goals that Congress expressed in the Telecommunications Act of 1996 ("the 1996 Act"). That goal is to ensure equitable, affordable and timely access to advanced telecommunications technology for everyone in the nation. Accordingly, we ask the Commission to examine the proposed merger of MCI WorldCom and Sprint in accordance with its obligations under Section 706 of the 1996 Act to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans...."[3] The Commission's review of the proposed transaction is particularly significant because of the potential impact of its decision on the Internet.

The proposed merger would combine the largest and second largest Internet backbone carriers in a market dominated by these two carriers. According to the information provided by the joint Applicants, MCI WorldCom and Sprint combined would have approximately 50 percent of the Internet backbone market.[4] Other sources estimate the merged entity would have a combined Internet market share as

[3] 47.U.S.C. Sec.157 note.

[4] Application for Consent to the transfer of Control of Licenses from Sprint Corporation to MCI WorldCom, Inc., Supplemental Internet Submission, CC Docket No. 99-333, Attachments1-5 (Jan. 14, 2000).

high as 65 to 70 percent.[5]

Under similar market conditions, the U.S. Department of Justice (and the European Commission) required MCI to divest its entire Internet business as a condition for approval of its merger with WorldCom.[6] In that merger review, the DOJ concluded that absent the required Internet divestiture, MCI/WorldCom would have had the market power to dictate the terms and price of interconnection on the Internet. The DOJ required MCI to sell its Internet business in order to preserve a dynamic, competitive Internet market in which several major backbone carriers of roughly equal size were mutually dependent on each other to exchange traffic and therefore had the incentive to support efficient interconnection.[7]

As a result of the divestiture mandate, MCI sold its Internet business to Cable & Wireless for $1.75 billion. It now appears that the remedy may not have led to the desired goal which was to create a viable competitor to replace MCI as a major player in the Internet backbone market. While there are undoubtedly many reasons to explain the significant drop in Cable & Wireless Internet backbone market share since its purchase of MCI Internet, a primary reason resides in the multiple difficulties involved in the divestiture of an Internet business that is fully integrated with other telecommunications services, as was the case with MCI Internet.

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[5] Chuck Moozakis, "Users Wary of Mega-Deal," Internet Week (Oct. 11, 1999); Mary Mosquera, "Sprint Buy Gives MCI WorldCom More Muscle," CMP Tech Web (Oct. 15, 1999).

[6] For a description of the divestiture, See Memorandum Opinion and Order, In the Matter of Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc., CC Docket No. 97-211, para. 151 (Sept. 14, 1998 rel).

[7] Address by Constance K.Robinson, "Network Effects in Telecommunications Mergers—MCI WorldCom Merger: Protecting the Future of the Internet (Aug. 23, 1999) (available at http://www.usdoj.gov/atr/public/speeches/3889.htm).

The Sprint Internet business is similar to MCI's Internet business in that it is fully integrated with Sprint's other telecommunications services and long distance network. Therefore, in this instant proceeding, divestiture of Sprint's Internet business may not be a sufficient remedy to resolve the anti-competitive problems in the Internet market. Two alternatives are possible: either a divestiture of MCI WorldCom's UUNET, which has not been integrated with MCI WorldCom's telecommunications networks and services, or alternatively, a divestiture of Sprint's long distance network which provides the underlying transport for Sprint's Internet backbone.

The latter alternative would resolve a second public interest harm that would result from the proposed merger. The proposed merger would combine the second and third largest long distance carriers, resulting in a long distance market in which the top two carriers would control 80 percent of the market. This would create market conditions in which the remaining "Big Two" would have both the incentive and ability to raise prices, reduce output, delay the introduction of new services, or degrade the quality of service provided to customers, particularly low-volume residential and small business customers. As Chairman William F. Kennard noted when the Commission approved the MCI WorldCom merger in the fall of 1998:

> Once this merger is consummated, the industry will again be posed just a merger away from undue concentration. I daresay that any subsequent merger – of this or similar magnitude – between long distance firms in the near future should be judged quite differently than the merger before us today.[8]

While APT agrees with the Applicants that RBOC entry into the long distance

[8] Press Statement of FCC Chairman William E. Kennard on Merger of WorldCom and MCI, Sept. 14, 1998.

market will have the positive impact of increased consumer choice in the long distance market, we do not believe that RBOC entry will be "timely, likely, and sufficient" to counteract the serious anti-competitive harm that would result from the proposed merger in the long distance market. Thus far, the Commission has approved only one Section 271 Application for Bell Atlantic in New York.

Thus, absent conditions that would mitigate the anti-competitive impact of the proposed merger in both the long distance and Internet markets, the Commission should conclude that anti-competitive harm far outweighs any purported public interest benefit from the proposed merger.

Finally, APT believes that equitable and affordable access to advanced technologies can significantly enhance the quality of life for all citizens by improving the way we work, learn, participate in government and obtain health care. Consequently, the Alliance has adopted the goal of "advanced universal service," which seeks

> [t]o make available as far as possible, to all people of the United States, regardless of race, color, national origin, income, residence in rural or urban area, or disability, high-capacity, two-way communications networks capable of enabling users to originate and receive affordable and accessible high quality voice, data, graphics, video and other types of telecommunications service.[9]

To ensure that all citizens receive the benefits of these technologies, we have urged the Commission in previous proceedings to implement policies that promote infrastructure investment and access to advanced telecommunications services, as the

[9] The Alliance for Public Technology, *Connecting Each to All: Principles to Implement the Goal of Advanced Universal Service* (1995) at 2.

1996 Act requires.[10] These comments reiterate the Alliance's view that advanced universal service will occur most efficiently and effectively through robust facilities-based competition.

The proposed merger between WorldCom and MCI is the latest example of companies trying to amass market power through the acquisition of actual competitors. In the restructuring of the telecommunications industry now underway, APT is particularly concerned that low income, rural and insular communities, which traditionally have received inadequate service, will continue to be excluded from the important benefits of advanced services. Thus, the communities with the most to gain from advanced telecommunications services, ranging from in-home health care to education and job training, would not have access to them. Recognizing this potential danger, Congress enacted Sections 254 and 706 of the 1996 Act to promote universal service and investments in advanced telecommunications infrastructure.

Any proposed merger that results in significant market concentration requires safeguards to ensure the continued diffusion of technology to marginalized communities and infrastructure investment. Without such safeguards, the merged entity could harm universal service, abandon residential and small business consumers, and discourage infrastructure investment to marginalized communities.

We believe that Section 706 of the 1996 Act provides the Commission with the authority and the means to impose such safeguards should it permit the merger of

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[10] See, for example, Comments of the Alliance for Public Technology, In the Matter of Federal-State Joint Service Board on Universal Service, CC Docket No. 96-45 (Dec. 19, 1996); and Comments of the Alliance for Public Technology, In the Mater of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98 (May 16, 1996).

MCI and WorldCom to proceed. In our view, Section 706 firmly supports such action, for the provision states that the Commission and its state counterparts, shall encourage timely deployment of advanced telecommunications capability to all citizens by

> utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, **measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.** (Emphasis added.)

Accordingly, we recommend that the Commission condition any approval to transfer control of telecommunications licenses and properties in this and future transactions on a requirement that the surviving company use some portion of the "synergy savings" to deploy advanced telecommunications infrastructure to traditionally underserved areas. We are particularly concerned that Sprint Corporation has thus far not deployed advanced services (either Sprint ION or xDSL services) in any of its rural local service areas in the 18 states in which it has local operations.[11] Nor do the joint Applicants make any commitment post-merger to increase investment in advanced services to close the digital divide in Sprint's rural local services areas.

Therefore, should the Commission resolve the anti-competitive problems in long distance and the Internet backbone that would result from the proposed merger,

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[11] Sprint offers DSL service in only three urban areas, Charlottesville, Va., Las Vegas, Nv., and Orlando, Fl.; Sprint offers DSL service to residential customers only in Charlottesville, Va. Sprint ION is being rolled out in three large cities: Denver, Kansas City, and Seattle. See Sprint Press Release, "Sprint Brings High Speed DSL Service and Earthlink Sprint Internet Access to Las Vegas" (Aug. 16, 1999) (available at http://www.sprint.com/Stemp/press/releases/199908/19909160847.html); "Sprint Begins Marketing Sprint ION Services in Denver, Kansas City, and Seattle" (Nov. 11, 1999) (available at http://www.sprint.com/Stemp/press/releases/19911/19911110896.html).

APT further encourages the Commission to include among the merger conditions specific commitments to accelerate deployment of advanced services in underserved urban and rural areas. In the SBC-Ameritech Merger Order, the Commission accepted SBC/Ameritech's commitment to non-discriminatory roll-out of advanced xDSL services to low-income urban and rural communities.[12] As an alternative, the Commission might consider a requirement that the merged entity commit a portion of the merger-related synergy savings to a Community Technology Fund which would be available to support deployment of advanced services in underserved communities. The Community Technology Fund that resulted as a condition of the California Public Utility Commission's approval of the merger between SBC and Pacific Telesis as well as a Technology Diffusion Fund that resulted as a condition of the Ohio Public Utilities Commission approval of the merger between SBC and Ameritech, provide examples of states' innovative use of authority under Section 706 to promote the advanced infrastructure investment that Congress intended.[13] We urge the Commission to seriously consider adopting this "other regulating method" to remove barriers to infrastructure development.

In conclusion, APT notes that this instant proceeding provides the

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[12] Memorandum Opinion and Order, In re Applications of Ameritech Corp., Transferor, and SBC Communications, Transferee, For Consent to Tranfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95, and 101 of the Commission's Rules, CC Docket No. 98-141 (Oct. 8, 1999 rel), para. 376.

[13] Order Denying Rehearing and Modifying D.97-03-067, In the Matter of the Joint Application of Pacific Bell Telesis Group (Telesis) and SBC Communications, Inc. (SBC) for SBC to Control Pacific Bell (U1001), Which Will Occur Indirectly as a Result of Telesis Merger With a Wholly Owned Subsidiary of SBC, SBC Communications (NV) Inc., Decision 97-11-035 (Nov. 5, 1997; Stipulation and Recommendation, In the Matter of the Joint Application of SBC Communications Inc., SBC Delaware, Inc., Ameritech Corporation, and Ameritech Ohio for Consent and Approval of a Change of Control, Case No. 98-1082-TP-AMT (Feb. 23, 1999).

Commission the opportunity to address investment incentives in the context of growing concentrations of market power in the Internet industry. However, absent conditions that resolve the anti-competitive impact of the proposed merger in the Internet and long distance markets, and absent conditions that ensure that the merged entity invests a portion of merger-related benefits to accelerate deployment of advanced services in underserved urban and rural communities, the Commission should conclude that merger is not in the public interest.

Respectfully submitted,

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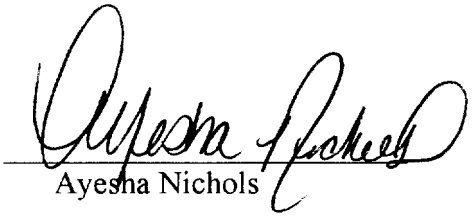

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